Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 157.

THE STATE BOARD OF ASSESSORS OF THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS, ET AL., APPELLANTS,

versus

THE COMPTOIR NATIONALE D'ESCOMPTE DE PARIS.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF OF RESPONDENTS AND APPELLANTS.

STATEMENT OF THE CASE.

The Comptoir Nationale D'Escompte de Paris, Complainant and Appellee in the above cause, is a corporation organized under the laws of France. It does business in many parts of the world; for a number of years it has had a branch office in the City of New Orleans, State of Louisiana, where it is engaged in the business of buying and selling foreign exchange, and lending money, obtained by the sale of such exchange, upon agricultural

products held in local warehouses or destined for shipment to foreign countries; and upon City, State or premium bonds. (R., p. 26.)

In the year 1901 the Board of Assessors of the Parish of Orleans, whose duty it is to list property for State and municipal taxation, levied against the Comptoir Nationale D'Escompte de Paris the following assessment:

> "Office furniture, $1,000; money in possession, on deposit or in hand, $20,000; money loaned on interest or advanced, or for goods sold, $175,000."

The taxes on the first two items, office furniture and money in possession, were duly paid, but the Comptoir Nationale D'Escompte de Paris, denying liability under the last item, "money loaned on interest," etc., filed a bill in equity in the United States Circuit Court for the Eastern District of Louisiana against the Board of Assessors, the City of New Orleans and the State and City officials charged with the collection of taxes, to cancel said assessment and to enjoin the enforcement of the taxes accruing thereunder.

Complainant averred that it had no money loaned on interest, or credits or bills receivable for money loaned on interest, or advanced, or for goods sold within the State of Louisiana and subject to the taxing jurisdiction of that State; that whatever sums it loaned in said State were merely debts due it; that it had no evidence of such indebtedness within the State; that accordingly these debts had no legal situs in Louisiana, were not taxable there and could only be taxed at the domicile of the Comptoir Nationale D'Escompte de Paris in France. It therefore averred that the attempted assessment was extra-territorial, and that such an assessment, and the Louisiana statutes justifying it, were in violation of the Constitution and jurisprudence of Louisiana and in contravention with the Federal Constitution and jurispru-

dence, and especially, in violation of that clause of the 14th amendment which declares:

> "Nor shall any State deny to any person within its jurisdiction equal protection of its laws, nor deprive any person of property without due process of law."

Respondents, by way of answer, upheld the legality of the assessment, asserted that the complainant had money loaned on interest, etc., within the State, amenable to its taxing power, and charged that if said complainant had changed its manner of doing business from the method pursued up to 1900, so that it no longer kept evidences of indebtedness due it within the State, such change had been made for the undoubted purpose of circumventing local taxation and with the obvious object of escaping the effect of the decision of the Honorable the Supreme Court of Louisiana in the case of the *Comptoir Nationale D'Escompte de Paris vs. Board of Assessors*, 52 La. Annual, page 1319, wherein the complainant had been adjudged liable to taxation under an assessment identical with that sought to be cancelled in the present suit. There was judgment in the Circuit Court in favor of the Comptoir Nationale D'Escompte de Paris, annulling the assessment and enjoining the collection of the tax, and respondents prosecuted this appeal directly to the Supreme Court of the United States.

Facts of the Case.

We deem it essential to a proper appreciation of the position of respondents, to bring to the Court's attention certain uncontroverted facts disclosed by the record, before discussing the law of the case.

As appears by the testimony of Mr. Albert Breton (R. pp. 18, 34), who was the agent of the complainant in the City of New Orleans from 1895 to April, 1901, the Comptoir Nationale D'Escompte de Paris has had an office in

said city and has been doing business there for a number of years. Its business consists of buying and selling exchange and lending money upon agricultural products on deposit in local warehouses or in process of export, or upon State, City and premium bonds. These loans amount to more than one million dollars annually. (R., p. 27.) Payment thereof is secured by pledge, as collateral, of the warehouse receipts or bills of lading covering the goods stored or to be shipped, or by pledge of the bonds themselves, which collateral remains in New Orleans with the agent of the Comptoir Nationale D'Escompte de Paris until the close of the entire transaction.

Up to the year 1900 borrowers of money were required to sign and deposit with the lender, who held them in New Orleans with the collateral, non-negotiable notes reading as follows:

> "——— promise to pay to Comptoir Nationale D'Escompte de Paris, for value received, ———, with interest at the rate of——per cent. per annum until paid. This note is non-negotiable and is secured by pledge of the securities mentioned on the reverse hereof, and in case of its non-payment, or should the drawer thereof, when called on, refuse or fail to keep the margin hereon good, the Comptoir Nationale D'Escompte de Paris is authorized to sell the said securities at public or private sale, without recourse to legal proceedings, and to make any transfers that may be required, applying the proceeds of sale towards payment of this note."

In 1898, however, the Board of Assessors levied an assessment against the Comptoir Nationale D'Escompte de Paris for money loaned on interest, all credits, etc., $50,000 (similar in all respects to the assessment assailed in this cause), which was resisted by the Comptoir Nationale D'Escompte de Paris in the Civil District Court for the Parish of Orleans on the ground that it had no

such property in Louisiana subject to taxation; that whatever debts were due it were beyond the taxing jurisdiction of the State; that the non-negotiable notes held by it in Louisiana, a copy whereof has been reproduced above, followed the domicile of the owner and were therefore taxable in Paris, France, and not in New Orleans, Louisiana. The matter went on appeal to the Supreme Court of Louisiana, and its conclusions are reported in the *52 La. Annual, page 1319.* We will not attempt to compress the decision of that tribunal into the present brief. Absolute familiarity with it, however, is indispensable to an appreciation of this cause, and we accordingly invite your Honors to a most careful examination thereof. Suffice it to say here that the Court reviewed, elaborately, every issue in the case, discussed in all its detail the character of the business done by complainant from the inception of a loan to its extinction, including the means of raising the money loaned, the evidence of the debt obtained, the security or collateral required, the continuing nature of the business. Its decree maintained the assessment, the Court holding "that non-negotiable notes representing loans in Louisiana, made by the agent of a corporation doing business therein, when kept within the State by the agent, may be subject to taxes by the law of the State in which they are held." *52 La. Annual, page 1319.*

About the time of this decision, complainant changed its method of doing business by the significant discontinuance of the practice of requiring borrowers to execute non-negotiable promissory notes. (R., p. 30.) In lieu thereof borrowers, since 1900, have been allowed to overdraw. A system of checks and interest-bearing over-drafts has been substituted for the non-negotiable notes declared taxable by the Court; otherwise the business, as the Supreme Court of Louisiana considered it in 1900, and

the business as disclosed by this record are identical. The money loaned is obtained in the same way, the same securities are required, the same hypothecation of the collateral (a form of which hypothecation appears in the record at page 40 as Exhibit E) is exacted and retained. The borrower now obtains a credit on the London or Paris office of the Comptoir Nationale D'Escompte de Paris, draws his draft thereon and sells same, or he gets the money direct from the local agent, and then, as an evidence of the transaction, draws his check on the local agency for the amount of the loan, which check is retained by the local agency as an evidence that such an amount has been paid by it to the borrower. Let Mr. Breton speak for himself, even though his limited acquaintance with the English language makes his answers somewhat difficult to follow (R., p. 32):

> "A.—No, I am going to explain the business; well, a client comes to me and says to me, and says I want $50,000 and I propose to give you such collateral, bills of lading for cotton or for grain, or warehouse, or bonded warehouse receipts for cotton or for cake, or cotton seed meal, any kind of those products. If I approve, ready to do the business, I say yes. Well, there are two ways of letting him have that money; very often I open a credit in his favor on the Comptoir Nationale D'Escompte de Paris in Paris or London, then he draws against that credit—I mean to say, he sells his draft on the Comptoir Nationale D'Escompte de Paris to anybody he pleases, either in New Orleans or in New York; if the loan is for a short period, instead of asking him to draw I will draw it myself and hand him the money.
>
> "Q.—You sell your own exchange?
>
> "A.—Then he is overdrawn on my bank, and, to show he has overdrawn I tell him, you draw a check on me, and he gives me that check, and then I make him sign a general letter of hypothecation (which will be shown to the attorney). Outside of that we

have nothing of importance—I don't see anything else.

"Q.—These securities and checks remain in your office here in New Orleans?

"A.—Yes, sir; the checks are cash vouchers for the cashier, who has them to show that he paid the money. * * *

"Q.—Does he take up again the check he has given?

"A.—No, sir.

"Q.—When the transaction is concluded what becomes of that check that he has drawn against your bank?

"A.—The check is a cash voucher; it stays among the cash vouchers of the day on which it is paid and remains perpetually in the custody of the Comptoir Nationale D'Escompte de Paris for the cashier to show that he has paid that check. * * *"

(R., p. 31.)

"Q.—Did you charge interest on your over-drafts?

"A.—Yes, sir.

"Q.—Then what evidence of indebtedness beside the account on your books with your customers have you that these people owe you anything at all?

"A.—We have a record of the settlements which we make every month. * * *

"Q.—What evidence have you that he owes you anything?

"A.—I have got a check from him, he is overdrawn on my books.

"Q.—For the amount you have loaned him?

"A.—Yes, sir. * * *".

(R., bottom pages 26, 27.)

"Q.—Do you know or can you state approximately the amount of loans that you made during the year 1900?

"A.—No, I cannot.

"Q.—About?

"A.—Well, I made so many loans, you know, only for a short period, and I cannot tell the total amount—it would be too far away, the exact amount.

"Q.—Was it over a million dollars, taking it all together?

"A.—Yes.

"Q.—How much over a million?

"A.—I don't know.

"Q.—Was it over two millions?

"A.—No, sir."

These are the facts of the case. We have deemed it advisable to quote freely from the record, but if the Comptoir's discontinuance in its business of the use of the non-negotiable notes, above alluded to, be borne in mind, the present record might well be dispensed with and the findings of the Supreme Court of Louisiana, as set forth in its opinion, be substituted therefor.

ARGUMENT.

We propose to show, first, that the assessment complained of, and the statute warranting the assessment, violate no provision of the Constitution of the United States; second, that such assessment has been levied in strict obedience to the Constitution and revenue laws of the State of Louisiana; and third, that whatever change has been made in its method of doing business by the complainant since the decision of the Honorable the Supreme Court of Louisiana in the case of *Comptoir Nationale D'Escompte de Paris vs. Board of Assessors*, 52 La. Annual, page 1319, has been resorted to for the express purpose of avoiding taxation, and constitutes such a shift to escape taxation as will preclude a Court of Equity from granting relief to complainant.

I.

No Violation of Federal Constitution or Jurisprudence.

How this assessment, levied under the conditions outlined above, conflicts with any provision of the Constitution of the United States, and especially with the 14th

Amendment thereto, it is difficult to see. The Comptoir Nationale D'Escompte de Paris is receiving the same protection from the laws of Louisiana accorded any other person. Any other non-resident corporation, under similar circumstances, would be similarly assessed, and citizens of the State of Louisiana, themselves, are paying taxes at this moment under identical conditions. Nor is there any deprivation of property without due process of law. *Omnia rite acta.* The assessment has been levied by the proper authorities under warrant of law, as we will show. The taxpayer, in return, is buying and selling and lending under the protecting arm of the law of Louisiana; its Courts are open for the enforcement of obligations due it; its property is safe under the police protection accorded by the civil authorities. It is simply being made to do what all citizens of Louisiana are required to do—contribute its just proportion of the general burden of taxation. The assessment attacked is constitutional.

Complainant's whole case, of course, is predicated on the theory that its millions of dollars at interest in Louisiana and the credits due it in that State are debts, and as such taxable alone at its domicile outside of Louisiana, namely, in Paris, France. It declares upon the doctrine *mobilia sequuntur personam.* Now, we are aware that the idea represented in this maxim of the law is the result of a proper comity that should prevail among nations and States. Its origin is respectable, its age venerable, and its purpose benevolent, but we do not understand that any sanctity hedges about it such as attaches to a doctrine having constitutional warrant. It is a mere fiction of the law and has no foundation in the Constitution of the United States.

Nor has it ever been treated as a doctrine of universal application by the Supreme Court of the United States, whose jurisprudence has consistently recognized it as

subject to modification by any sovereign State, whenever so deemed desirable. Even in the case of the *State Tax on Foreign Held Bonds* (15 Wallace), which is always quoted to maintain the judicial recognition of the doctrine *mobilia sequuntur personam*, the limitations of that doctrine were noted, and actual situs of certain personal property was declared to determine its taxability, and not the domicile of the owner, if State statutes so decreed. We will not attempt to trace the jurisprudence of this tribunal since that decision, as such a course would cover too well-worn a path, but each succeeding expression of the Court has undermined, more and more, the significance of this legal maxim, and has fortified the right of control by the State on this subject-matter. Over and over again has the right of the State to tax personal property within its limits been upheld, even where the owner was neither a citizen nor a resident of the State imposing the tax. *Tappan vs. Merchants' Bank*, 19 Wallace, 490; *State R. R. Tax Case*, 92 U. S. 575; *Coe vs. Errol*, 116 U. S. 517; *Pullman vs. Pennsylvania*, 141 U. S.

Neither fictions like *mobilia sequuntur personam*, nor yet sound legal principles like *stare decisis*, have availed to check this Court in its evident determination to maintain the authority of the States in these matters of taxation. When the Foreign Held Bond decision, for instance, was invoked to prevent the taxation in Oregon of mortgages on land in that State owned by non-residents —a proposition unquestionably reprobated in the Foreign Hend Bond case—the Supreme Court of the United States did not hesitate to declare the language used in 15 Wallace, *obiter*, and irreconciliable with other decisions, and promptly subjected such mortgages to taxation, making statutory law superior to artificial distinctions. *Savings Society vs. Multnomah Co.*, 169 U. S. 421. Then followed the epoch-making decision of *Stempel vs. City*, 175 U. S.,

where notes and bonds were held assessable away from the domicile of the owner. The similar case of *Bristol vs. Washington County*, 177 U. S., a little later, maintained once more the power of the State to deal with personal property within its borders, regardless of the domicile of the owner. But the death blow to the theory that personal property necessarily and invariably follows the owner, for the purpose of taxation, was struck in *Blackstone vs. Miller*, 188 U. S. 205, when this Court, asking the question, "What gives the debt validity?" answered as follows:

> "Nothing but the fact that the law of the place where the debtor is, will make him pay. It does not matter that the law would not need to be invoked in the particular case. Most of us do not commit crimes, yet we nevertheless are subject to the criminal law, and it affords one of the motives for our conduct. So again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. To test it, suppose that New York should turn back the current of legislation and extend to debts the rule still applied to slander that *actio personalis moritur cum persona* and should provide that all debts hereafter contracted in New York and payable there should be extinguished by the death of either party. Leaving constitutional considerations on one side, it is plain that the right of the foreign creditor would be gone. Power over the person of the debtor confers jurisdiction, we repeat. And this being so, we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the State at the time of the death. The maxim *mobilia sequuntur personam* has no more truth in the one case than in the other. When logic and policy of a State conflict with the fiction due to historical tradition, the fiction must give way."

The Court thus shattered the contention urged so tenaciously that the person of the debtor played no part in

fixing the taxing situs of personal property and disposed of any previously expressed contrary views in the Foreign Held Bond case by "cutting that case down to its precise point."

Our appreciation then of the jurisprudence of the United States Supreme Court may be summed up as follows: that while the doctrine of *mobilia sequuntur personam* prevails in the absence of contrary statutory authority, the right of the State to modify it and to subject personal property within its borders to taxation, independently of the domicile of the owner, is clear. We do not mean that this Court is impotent to check any abuse of this power by a State, but we understand that your Honors will, in determining whether the taxing jurisdiction of a State extends to a particular class of property within its borders, such, for instance, as obligations, credits and the like, take into consideration not only the physical aspect of the property and the place where it chances to be kept, but also the home of the debtor, the laws of the State where the debt is collectible, the forum where it can be enforced, the nature of the business, whether transitory or permanent, by which such debt is created, and the property that has accumulated as a result of such business. In this conclusion we are fortified by the comprehensive review of the jurisprudence of the Supreme Court of the United States on this subject, recently set forth by the highest court of Mississippi in the well-considered case of *Adams vs. Colonial & U. S. Mortgage Co.*, reported in 34 Southern Reporter, page 460.

Now, measured by this test of the taxing jurisdiction of the State of Louisiana, we submit that the assessment levied against the Comptoir Nationale D'Escompte de Paris is legal and proper. Here is a foreign concern doing a business in the State of Louisiana, of lending money on collateral exceeding one million dollars per

[illegible], through an agent who has an office in the State and acts without consultation with his principals in Paris in ordinary business transactions. If the State of Louisiana sees fit, by statute, to tax this non-resident concern and to put it on the same plane as its own citizens, we see no violation therein of the Federal Constitution or jurisprudence. The Constitution of the United States affords but scant comfort to those who invoke it in an effort to ecape their just obligations to a sovereign State.

II.

No Violation of Louisiana Constitution, Laws or Jurisprudence.

We come now to our second proposition, that the assessment complained of transgresses no provision of the State of Louisiana, nor any law of that State. Article 225 of the Constitution of 1898 declares that "all property should be taxed in proportion to its value." In obedience to that constitutional mandate the General Assembly, in the same year, adopted Act 170, which imposes a tax on the assessed valuation of all property within the State, except such as is expressly exempt by law. Section 1 of Act 170 affirmatively declares the term "property" to mean and include

> "all personal property, all rights, credits, bonds and securities, promissory notes, open accounts and other obligations, all cash, all money loaned at interest and all movable and immovable, corporeal and incorporeal articles or things of value owned and held and controlled within the State of Louisiana by any person in any capacity whatsoever."

Section 7 reiterates, that it is the duty of the tax assessors to place upon the assessment rolls all property subject to taxation, and concludes with the special admonition that

> "this shall apply with equal force to any person or persons representing, in this State, business interests

> that may claim a domicile elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from business done in this State are hereby declared assessable within this State and at the business domicile of said non-resident, his agent or representative."

This statute is identical with Act 106 of 1890, which the present tribunal had under consideration in the Stempel case. It is comprehensive enough to include all conceivable forms of property, and it is specific enough to cover any particular class thereof. It provides for the taxation of all property and it ordains especially the taxation of all rights, credits, money loaned at interest, etc. Not only must the citizens of the State pay taxes on these things, but the statute says that all persons doing business within the State must pay taxes thereon at the business domicile of said non-resident or his agent within the State.

Here then is the most ample statutory warrant for the assessment in Louisiana of the credits and obligations due the Comptoir Nationale D'Escompte de Paris as a result of its business done in Louisiana. If a Louisiana statute declares them assessable in that State, what reason is there in logic or equity or common sense, for relegating them to France for taxation? Are we to make a fetich of a Latin maxim and exalt fictions above actualities? Certainly, if the plain words and spirit of a statute are not to be disregarded, Act 170 of 1898 means and decrees that movable property in Louisiana is to be assessed in Louisiana without consideration of the domicile of the owner of such property. The assessment against the Comptoir Nationale D'Escompte de Paris not only violates no law of Louisiana, but is in absolute accord with the spirit and letter thereof.

But complainant insists that the interpretation which has been placed on this and similar statutes by the Supreme Court of Louisiana justifies its contentions in this case. It argues that the taxation in Louisiana of money loaned at interest, credits, etc., and owned by non-residents, is repugnant to the jurisprudence of Louisiana. Now, we admit that the Courts of Louisiana have been loath to abandon the doctrine of *mobilia sequuntur personam*, and that, in spite of legislative behest, they have refused to sanction taxation of personal property away from the domicile of the owner, unless such personal property assumed a "concrete" form, to use the adjective in vogue in this line of decision. We may say, in passing, that this use of the word "concrete" does not appear to be justified by any definition thereof to be found in any law lexicon or in even any ordinary dictionary, and we presume that the word is used in the sense of "tangible." We may add, further, that this test of "concreteness" or "tangibility" as a prerequisite to taxation, is absolutely absent from the statutory law of the State, and that it is a pure piece of judicial legislation. But a discussion of the action of the Supreme Court of Louisiana in thus injecting as criteria of taxability, conditions and limitations not countenanced by statute, would serve no useful purpose here. We accept the test of the Louisiana Court, that movables owned by non-residents will not be taxed in Louisiana unless they have been localized in some tangible form, but we ask, what is the standard of tangibility required by that tribunal? For instance, in the leading case of *Meyer vs. Sheriff*, 34 La. Annual, 645, the Court refused to tolerate the assessment of a judgment away from the domicile of the owner, and yet, in 51 Annual, 1033, the same tribunal declared that the taxing power of the State extended to judgments owned by corporations actively engaged in business within the State, without regard to the owner's domicile. A learned judge, in 44 Annual, 770,

guardedly declared that "possibly negotiable promissory notes can acquire a taxing situs apart from the residence of the owner," and in 52 Annual, 1319, the Court boldly held that non-negotiable notes can be assessed away from the domicile of the owner. In 46 Annual, page 1, the Court rejected an assessment of a deposit in bank by a non-resident, and in 49 Annual, page 44, and again, page 1173, the former decision was restricted to the particular facts of the case and bank deposits were subjected to taxation.

These citations show a shifting standard of tangibility or concreteness as a *sine qua non* of taxability, but, to the credit of the Supreme Court of Louisiana, be it noted that such variations in the test of tangibility have always resulted in subjecting an ever-widening class of personal property to taxation. Whatever modification of views these decisions show, the general trend of such modification is in the direction of reaching wherever legally possible, that class of society which only pays its taxes at the point of a decree of a court of last resort.

Not losing sight then of the general tendency of Louisiana jurisprudence, let us investigate the decision of the Supreme Court of Louisiana in the case of the *Comptoir Nationale D'Escompte de Paris vs. Board of Assessors*, 52 Annual, 1315, above referred to and decided in 1900. A perusal of that case shows that it was considered with unusual care and fullness. The opinion was handed down by the Chief Justice of the Court, and the Comptoir Nationale D'Escompte de Paris was represented by the distinguished counsel who now appears in its behalf in this tribunal. Every ground urged for the nullity of the assessment was reviewed, and the case was considered from every aspect and every detail. Going a step further than it had ever done before, the Court held the Comptoir Nationale D'Escompte de Paris liable to taxation, relaxing its test of tangibility further than it had ever done by accepting non-

negotiable notes as sufficiently concrete evidences of indebtedness. But, as the decision shows, the Court did not rest its opinion upon the existence of these non-negotiable notes alone; it based its conclusion, likewise on the other facts stated by it; namely, that the Comptoir Nationale D'Escompte de Paris was pursuing a continuing business in the City of New Orleans through an agent with an office there; that it was regularly investing and reinvesting its monies through its agents in loans throughout the State, secured by collateral deposited with this agent and remaining with him; that such monies were not loaned in occasional, exceptional or isolated cases, but that, year in and year out, it pursued a well established permanent business conducted in an office rented for that purpose by the agent charged specially with such duties.

A comparison of the case with the present suit shows an absolute similarity; the parties are the same; the assessment is the same; the grounds of complaint against it are the same. The method of doing business varies but in one particular, for the money is obtained in the same way; it is loaned, through the same agent, to the same class of patrons, upon the same collateral, after the same written hypothecation, for the same consideration. The transaction begins in Louisiana, it ends there; all the papers in the case remain there. The only respect in which the facts of this case differ from the facts as found by the Supreme Court of Louisiana, is in the discontinuance of the practice of requiring promissory notes to be signed by borrowers, and in the substitution in lieu thereof of a system of bank checks drawn by the borrower on the Comptoir Nationale D'Escompte de Paris and of overdrafts by such borrowers on the Comptoir's books. We challenge the production of proof showing any other difference in the facts of the two cases.

Now then, still bearing in mind the ever-growing desire

of the Courts of Louisiana to tax personal property of non-residents wherever legally possible, and recalling the decision of the Louisiana Supreme Court in the Comptoir case in 1900, we make so bold as to ask your Honors to suppose the present record with its proof of the substitution of bank checks and over-drafts for the non-negotiable notes, to be under consideration by the Supreme Court of Louisiana. What do your Honors think would be the decision of that august tribunal? Can your Honors believe that, finding the facts of the two cases alike, except in the one particular noted above, the Supreme Court of Louisiana would tolerate this palpable effort to nullify its own decree? Face to face with such a bald, transparent attempt to render nugatory its own findings, would it look around for evidences of indebtedness in the shape of written promises to pay, and then discovering them vanished as a result of some legal prestidigitation, would it exempt from taxation the very same money at interest and credits it had taxed three years ago? We do not believe it. We say it is more consonant with the former action of the Court, with its high reputation for self-respect, justice and fair dealing, to assume that the Court would brush aside technicalities and, that leaving behind the baneful tradition of its Insurance decision, it would boldly take the position that no written evidences of money loaned or credits held in Louisiana and owned by non-residents, were necessary to subject such money or credits to taxation in that State under circumstances and conditions such as are disclosed in the present record.

We confidently believe that the Supreme Court of Louisiana would dismiss complainant's bill, and so believing, we say, with all respect, that this Court must hesitate long before it takes any other course, for, as was said by Mr. Justice Brewer in the *Stempel case*, 175 U. S. 316:

> "When the question is whether property is exempt from taxation and that exemption depends alone on a

> true construction of a statute of a State, the Federal Courts should be slow to declare an exemption in advance of any decision by the Courts of the State. The rule in such a case is that Federal Courts follow the construction placed upon the statute by the State Courts, and in advance of such construction they should not release any property within the State from its liability to State taxation unless it is obvious that the statutes of a State warrant such exemption, or unless the mandates of the Federal Constitution compel it."

A fortiori is this true when the highest Court of a State has maintained the liability to taxation of the very litigant invoking Federal jurisdicton under practically identical conditions.

We trust the Court will pardon us for pressing the argument a little further, on the same lines. Suppose the present record were before the Supreme Court of Louisiana and that tribunal were unwilling to maintain the assessment against complainant, a non-resident, for personal property unless it were proven that there were in that State tangible concrete evidence of the money loaned or credits due, would there be any difficulty in pointing to ample evidence of such indebtedness reduced or crystalized to the required degree of concreteness, abounding in the record? Mr. Breton's testimony shows that when a borrower now inaugurates a transaction or loan, instead of signing a written promise to pay, he draws his ordinary check on the Comptoir, which honors same by immediate cash payment or by handing to the borrower a draft on the Comptoir's London, Berlin, or Paris office, which draft is promptly converted into cash in the New Orleans or New York market. When asked the natural question, "What evidence have you that a borrower owes you anything?" Mr. Breton naively answered: "I have got a check from him; he is over-

drawn on my bank." And again to the interrogatory: "What sort of evidence did you take?" came the logical reply: "Well, they drew a check." (R., p. 28.) Is not the check evidence of the debt in written form? Is it not equivalent in tangibility to the non-negotiable notes that were formerly used? Wherein does it differ from the receipt for money loaned (R., p. 31) formerly required, and considered by the Supreme Court of Louisiana in fixing the liability of the Comptoir to taxation? The check shows beyond dispute, over the signature of the borrower, what sum of money has been lent.

We therefore undertake to say that the check accompanying every transaction, and admittedly held in Louisiana as proof thereof, would satisfy the requirement of the Supreme Court of Louisiana, if it still demanded tangible evidence of indebtedness as a basis for taxation of the complainant. Certainly it meets the test of the learned counsel for appellee, as appears by reference to an excerpt from his brief, reproduced by the Supreme Court of Louisiana in its opinion in the *Comptoir case*, 52 La. Annual, page 1330. We quote from that extract from counsel's brief in the former case:

> "As held in 15 Wallace, 323, the true test of tangibility of a credit held by a non-resident is 'does such credit, by general usage, acquire the character of and is it treated as property, and does it pass as money wherever it may be?' State and municipal bonds have this character and so *possibly checks upon solvent banks.*"

Further, in addition to executing such a check, the borrower makes a manual delivery of the collaterals which he deposits as security for his loan and which remain with the lender until the transaction is concluded. At the same time he signs a written instrument of pledge or hypothecation by

which he authorizes a sale of the collateral if he fail to keep up the necessary margin, and by which he likewise promises to pay any deficiency remaining due if these collaterals, when sold and applied to the payment of the debt, do not realize an amount sufficient to discharge same. The existence of this check and the delivery of the collateral, and the written pledge thereof, and the entry of the transaction on the Comptoir's book, all these would make it perfectly easy to recover judgment against a borrower in a court of law were parol evidence of the debt inadmissible and documentary proof alone receivable in evidence. Admitting then, for the sake of argument, that personal property owned by non-residents is taxable in Louisiana only when same assumes a concrete form, we submit that there is convincing proof in the present record showing that the Comptoir has in its possession in Louisiana written evidence of the indebtedness due it as the result of the business done by it in Louisiana.

We wish to impress upon the Court that complainant's business is a steady continuing business, that it has regularly invested and reinvested its monies in Louisiana, and that the proceeds of one loan, when collected, are promptly put into circulation in the shape of another loan. True, there is an effort made in the case to deny these facts and to prove that there is no continuity in the business, and that each transaction is a separate and independent one because the money therefor is obtained by the sale of exchange. But the Supreme Court of Louisiana disposed of this contention in the following words:

> "The evidence establishes that the plaintiff corporation is pursuing in the City of New Orleans a continuing business through an agency there; that it loans money upon collaterals of various kinds for which the borrower gives the company his non-negotiable promissory notes.

"These notes, received by the agent, are kept by him until maturity, when they are either taken up by payment in money by the debtor or through exhaustion of the collateral.

"The monies so received are reinvested in other loans.

"It is claimed that the plaintiff never sends its own monies into this State and there lends them, but that the monies loaned are obtained through foreign drafts or bills of exchange.

"We think the particular manner or instrumentality by which the monies used by plaintiff in the course of its continuing business in Louisiana is obtained is a matter of no moment or significance in the consideration of the question."

We do not think we could more fittingly conclude our discussion on this branch of the case than by quoting the following extract from the *Bluefields Banana Company case*, reported in 49 La. Annual, page 43:

"The foreign corporation had an agent here, where it received and where it sold fruit and received the price for the same. Part of the proceeds were withheld in the hands of the agents for purposes incidental to the prosecution of its business, and part deposited to the credit of the company, subject to the check of its local agent. Also for the prosecution of its business here, and for such other purposes as the company might direct it to be applied to. The company transacted business in New Orleans precisely as did resident business men and firms. It received all the advantages to be derived from the State and City governments which residents received, and we see no reason why it should not be taxed, as claimed in this proceeding, unless there be insuperable legal objections in the way."

The assessment, therefore, conforms to the tests of taxability laid down by the Supreme Court of Louisiana and should be maintained by the Supreme Court of the United States

III.

Evasion of Taxation.

Sydney Smith, the great English wit, said, in 1820, that "there was nothing certain but death and taxes."

However true this epigram may have been in regard to death, and as to taxes when this great wit uttered it, in 1820, the progress of time has proved its utter falsity. The ingenuity of man has in the past three-quarters of a century devised so many devices, shifts and subterfuges to avoid taxation, that some wit, familiar with the subject, has declared that "tax dodging has become a fine art." This is especially true in regard to the evasion of taxes on personal property. This species of property, which in most instances is the best paying and most remunerative, and receives more protection from the government in the way of police protection, from theft, fire, mutilation, and the resort to the Courts, far beyond that afforded to real estate, and yet by devious devices, escapes to a larger degree its just proportion of taxes for the protection and security furnished by the State and municipalities. Indeed, Ex-President Harrison, in one of his lectures to a law school, said that personal property constituted two-thirds of the most valuable wealth of the Union, and yet paid less than one-third of the taxes, and declared that the paramount problem of government was for the law-making and judicial and executive branches to devise efficient means to thwart and circumvent these prevalent devices to avoid taxation on this character of property. No more patent and transparent evasion, in our opinion, has been invented and resorted to than the one involved in the present case, as we will proceed to show. The complainant herein is a foreign corporation doing an extensive business in New Orleans, in buying and selling exchange, and also in lending money. In a former case (52 La. An. 1323), to which the present cause is a sequel, it was

acknowledged that it did business to the amount of millions of dollars per annum. And in this case (Rec. p. 27) Breton, the former agent of the company, testified:

"Q.—Was it over a million dollars?
"A.—Taken altogether, yes.
"Q.—How much over a million?
"A.—I do not know.
"Q.—Was it over two millions?
"A.—No, sir."

It is probable that it loans more money than all the banks of New Orleans combined. In that case (52 A.) it contested a tax laid on its money loaned, for which it took promissory notes, contending that because it obtained this money to lend to its customers, by drawing bills of exchange, these notes could not be taxed. The Supreme Court of Louisiana negatived this contention, and sustained the tax. In that case the lower court had sustained the tax for 1898, which was the one in contest, rendering its decision on June 12th, 1899. The case was submitted, after argument in the Louisiana Supreme Court on March 8th, 1900, and decided on April 2nd, 1900.

The complainant changed its manner of doing business in 1900, and instead of taking promissory notes from the borrowers, took checks on the company, in lieu thereof. It was impossible to ascertain from the witness, Breton, exactly when this change was made. On p. 30 Record, he was asked:

"Q.—When did you cease to take these promissory notes?
"A.—In 1900.
"Q.—The first of the year, 1900?
"A.—Yes, sir."

And again on p. 31, "I cannot state the exact date, the first of 1900." Here is strong circumstantial evidence to show that this change was made to avoid taxation. The fact

that the witness declines to state the date when the change was made becomes a suspicious fact, for the following reasons. The decision in the lower court was rendered June 12th, 1899, and signed June 30, 1899. The case was submitted in the Supreme Court of Louisiana March 8, 1900, and decided on April 2, 1900. It therefore became important to know exactly when the change was made, in order to determine what the motive or intention was. It is obvious that the witness could have, if he had so desired, ascertained and given the exact date when the change was made. It is plain that it was made after the decision in the lower court was rendered and signed, and probably after the decision in the Supreme Court of Louisiana, on April 2nd, 1900. Another important fact is that under Sec. 26, Act No. 170 of 1898 of the General Assembly of Louisiana, p. 360, it is provided:

> "That all taxpayers in the parish of Orleans shall have the right to appear before a standing committee on assessments of the city council of New Orleans between the 21st day of March and the 10th day of April, inclusive, of the year in which the assessments are made * * * during the sessions of said board and be heard concerning the descriptions of the property listed and the valuation of the same as assessed."

In paragraph (7) seven of complainant's bill (Rec. p. 3) it is claimed that such application was made "between the 21st day of March and the 10th day of April of the year 1901, being the year in which the said illegal assessment was made." And it is added in the same article "that said committee declined to hear your orator and it was deprived of the hearing provided by law and demanded by it and that said illegal assessment was allowed to remain." In respondent's answer under Article 7th (Rec. p. 13) the truth of the fact of the application for cancellation having been made was admitted, but the answer proceeded to "deny

all other allegations therein contained, and especially and particularly deny that complainant was in any way deprived of any hearing provided by law, or that it was refused the same." The record discloses nowhere any proof of the denial or refusal, and as a matter of fact it is not true. *Non constat,* but what if an application for a hearing had been made, it would have been granted, and complainant would have been obliged to produce his books and papers in order to show when this change was made.

It is true that on p. 31 of the Record the witness testified:

> "Q.—Was this change in your business made in pursuance to the decision of the ——?
>
> "A.—No, sir; as I told you before, it was on account of the demand made by clients asking to do what all the local institutions did."

It will be seen that the witness was so swift that he did not wait to have the question completed as to what decision, or of what court, he was being interrogated about. On page 20 of the Record he says: "We did not receive promissory notes or bills receivable because our clients preferred and insisted to be simply overdrawn," and this subterfuge is repeated several times in the witness' testimony. Complainant produces no witness, nor does he name a single client who preferred and insisted on giving checks instead of notes, which he could easily have done if his testimony could be corroborated. Again, he says that his clients asked the change, that is "to do what all the local banks are doing" (Rec. p. 31). There was no corroborative proof of this bald assertion, when many witnesses could have been summoned to corroborate and prove it, if it were true. Mr. Fulton, President of the Commercial Bank, a witness for respondent (Rec. p. 35), testifies that checks are received for exchange loans, and exchange advances. Mr.

Green of the Whitney Bank, a witness for respondent, testifies (Rec. p. 36):

> "For all advances on exchange we invariably take a receipt as an evidence of indebtedness; they attach the collaterals to this receipt, for advances against exchange, which shows the exact amount we advance against them.
>
> "Q.—You have no other evidence of indebtedness?
>
> "A.—No, sir; the receipt takes the place of it.
>
> "Q.—Do you know what is the custom in the other banks in the City of New Orleans?
>
> "A.—As far as I know they follow the same rule."

And he relates his similar practice with V. & A. Meyer and Julius Weiss & Son, large dealers in foreign exchange. His testimony was introduced by respondents to contradict the witness, Breton, on this point, *even as to foreign exchange*. But in the case at bar we are not dealing with foreign exchange, but with cash actually loaned, the cash being realized by the complainant on its own bills of exchange, and the cash thus realized loaned to the borrower, an entirely different transaction from a customer offering exchange to a bank. On page 29 of Record, Breton says:

> "Q.—The sum and substance, I understand, of the exchange business is that whatever money you loaned out in whatever form it might be, was raised by exchange?
>
> "A.—Yes, sir." And on page 31: "I do not credit him.'
>
> "Q.—You pay him?
>
> "A.—Yes, I pay him the money."

And on page 26:

> "Q.—When in answer to the fifth interrogatory you say the money was obtained by drawing foreign exchange on Europe, you mean to say that the cash which you lent in the City of New Orleans was obtained by

drawing this foreign exchange on Europe and getting it cashed here in the banks?

"A.—Getting it in New York.

"Q.—And the cash was forwarded to you from New York?

"A.—Yes, sir?"

So that the only way in which foreign exchange figures in this matter is that the complainant gets the money which he loans out in cash in New Orleans, by getting the cash which he gives the borrower which has been obtained by drawing complainant's own exchange bills on Europe or New York. This constant introduction in the testimony of its dealing in foreign exchange, is a mere subterfuge to confuse the mind of the Court, under the pretense that the complainant's business is entirely in foreign exchange. This was the old subterfuge unsuccessfully attempted in 52 La. Annual, p. 1330, and which the Supreme Court of Louisiana rejected, saying:

> "We think the particular manner or instrumentality by which the money used by plaintiffs in the course of its continuing business in Louisiana is a matter of no moment, or significance in the consideration of the question which we are now dealing with. It beyond question loaned moneys in Louisiana, which for the purposes of the loans, were the company's moneys, and the borrowers give the company their own non-negotiable promissory notes to represent money received from the company."

We thus have the following circumstances to show that the change was an attempted evasion of taxation: 1st, the refusal of the witness to state the exact time when the change was made, altho' it was in his power so to state; 2nd, the decisions of the Louisiana State Courts as an incentive to the change; 3rd, his excuse of his client's demands for the change, uncorroborated by a single witness,

when he could have easily produced witnesses to corroborate his statements, if it were true; 4th, his effort to confuse the tax on the loan with a tax on foreign exchange. Against these four cogent and strong circumstances there stands only the simple, unsupported testimony of the witness that the change was not made to avoid taxation. We submit that the witness' denial cannot prevail against all the circumstances developed in this case. Neither law nor equity will allow it to prevail, as we proceed to show by the following text writers and other authorities:

Having thus shown that the strong circumstantial evidence in this cause establishes that the change on the part of this company in taking checks instead of promissory notes was done in order to avoid and evade taxation, the next question which presents itself is, is this change such a device as will not be recognized and given effect to, by the courts?

Cooley on Taxation (p. 415, 2nd edit.) lays down the doctrine in such cases in the following words:

> "Shifts to Evade Taxation.—The Federal revenue laws abound in provisions for circumventing and punishing frauds upon the revenue, and State legislation is not without enactments of similar nature. But it is not uncommon to encounter in the administration of tax laws shifts and devices, not amounting to legal fraud, but which nevertheless have in view the same purpose, to avoid a just share in the burdens of taxation. Sometimes, but not always, it is possible to defeat such attempts when the facts are known."

And cites authorities to show that courts will examine into the facts of each case and will not lend their aid to these frauds on the revenue. On p. 433 the author says, in note 3:

> "It is a principle of the common law that all contracts and arrangements made for the defeat or evasion

of the revenue laws of a country are illegal, and the courts will give the parties no remedy in respect to them."

Welty on Assessments (p. 317, Sec. 174) also says:

"But where a party converts money or property into U. S. bonds or treasury notes, to evade taxation and not as an investment, it will be regarded as a fraud against the revenue laws of the State, and he will be subject to taxation to the same extent as if such device had not been attempted;" and on page 320, same section, the author says: "It is only when the property exchanged is withdrawn from taxation, or sought to be, by a pretext or a device, that the transaction becomes a fraud against the State revenue laws, and for taxable purposes is disregarded."

Greenhood, on Public Policy, under Rule CLIX (pp. 152-153) lays down the doctrine: "Any contract which has for its object the practice of deception upon the public or public officers * * * or which is made in order to consummate a fraud upon the people, or the public treasury, or upon third persons, is void;" and under Rule LXIX (p. 48) he says: "But no executed contract which is made for the purpose of accomplishing something opposed to public policy" is valid; and on p. 53, under illustrations of the rule No. XXIII, he cites and endorses the decision which held that "A assigned a mortgage held by him to evade the taxation laws of the State. He afterwards brought a bill to annul the assignment. His bill was dismissed."

12 Eng. and Am. Encyc. of Law (2nd edit.):

"Investment in Government Bonds, etc., to Escape Taxation.—United States bonds or other securities or treasury notes which are legitimately held as an investment, remain exempt, though one purpose in securing them was to escape taxation to the extent of such investment. But exemption cannot be successfully

> claimed by a person whose investment in such securities or legal tender notes has been colorable and temporary, and merely to avoid holding taxable property at the time when the assessment was made."

The text of all these eminent authors and commentators is abundantly sustained and supported in the following cases by this Honorable Court:

In 9 Kansas, p. 235 (*Mitchell vs. Commissioners*): A party had a deposit of current funds in a bank, and on Feb. 28 drew it out in legal tender notes, and made a special deposit of the legal tender notes in the same bank and three days afterwards changed his special deposit of the legal tender notes into a general deposit of current funds, and sought to escape assessment and taxation on the amount of the special deposit, because on March 1st, the day the assessment was made, the deposit was in non-taxable legal tender notes, it was held that "the whole transaction is for the special and express purpose of escaping taxation on such deposit; *held* that, as to the government, the transaction was void, and the actor not entitled to the intervention of the courts to be relieved from the taxes imposed on such deposits." (Syllabus).

The Court said on p. 238:

> "It is also conceded that the transaction between plaintiff in error is not in contravention of law, of itself. But it is contended that the motive, being to defraud the government of its just dues, and enable the plaintiff to escape the just burdens that society imposes upon him, enters into and vitiates the whole transaction, and that a Court of Justice, sitting as a Court of Equity, will not lend its aid for the accomplishment of any such purpose, and we think the argument is a good one. * * * The judgment is affirmed." (All the Justices concurring.)

This case was carried to this Honorable Court on writ

of error (91 U. S. 208, 1 Otto) and this Honorable Court affirmed the decision and judgment of the Kansas Supreme Court in these few words:

> "Mr. Chief Justice Waite delivered the opinion of the Court. We think the *decision in this case* was correct. United States notes are exempt from taxation by or under State or municipal authority; but a court of equity will not knowingly use its extraordinary powers to promote any such scheme as this plaintiff devised to escape his proportionate share of the burdens of taxation. His remedy, if he has any, is in a court of law."

In 45 Ohio St. 632 (*Shotwell vs. Moore*), wherein currency was converted into United States notes, "on the day preceding the second Monday in April in said respective years" (1881, 1882, 1883, 1884, 1885), the second Monday of April being the beginning of the assessment for each year, the Court held that the conversion was for the purpose of avoiding taxation, and that the United States notes were liable for the tax, under the assessment. This case was also brought to this Honorable Court by a writ of error.

This Honorable Court affirmed the decision of the Ohio Supreme Court in 129 U. S., 590 (*Shotwell vs. Moore*), and on p. 597 said, after citing authorities: "All these decisions show that the courts look upon this transaction as indefensible, and consider it an improper evasion of the duty of the citizen to pay his share of the taxes necessary to support the government," and sustained the decision of the Court *a quo*, that the attempted evasion would not exempt the property from taxation.

This doctrine has been uniformly sustained by the Supreme Courts of the States of the American Union, whenever the issue has been presented, as will be seen by a careful reading of the following cases: *Jones vs. Seward*, 4 N. W., 946, 10 Nebraska, 122; *Dixon County vs. Halstead*, 23

Neb., 697, 37 N. W., 621; *Drexler vs. Tyrrell*, 15 Nev. 115; *Holly Springs Sav. & Ins. Co. vs. Supervisors of Marshall County*, 52 Miss., 281 (24 Am. Rep., 668); *Sheldon et als. vs. Pruessner*, 22 Lawyers' Annot., Rep. 709 (Kansas); *Ogden vs. Walker*, 59 Ind., 460; *Poppleton vs. Yamhill Co.*, 8 Oregon, 340; *Walker vs. Jaeger et al.*, 39 Iowa, 2208; *Bellinger vs. White*, 5 Neb., 401; *Shotwell vs. Moore*, 45 O. St. 632; *Mitchell vs. Commissioners*, 9 Kansas, 235.

But it may be said that in most of these cases, as well as in the Honorable United States Supreme Court cases, the decisions were based on the fact that current funds were changed into United States legal tenders, or United States bonds, just before the time of assessment, and then immediately reconverted into current funds after the assessment was made. It may be argued that the courts uniformly conceded that a person or corporation in order to evade taxation, might convert funds into non-taxable United States securities, as a *permanent* and *bona fide* investment, and yet the United States bonds or notes would not be assessable and taxable and the courts held to the taxability only when the reconversion into taxable funds followed immediately after the assessment. This is true in regard to the cases in 9 Kansas, 235; 91 U. S., 208; 45 O. St., 632; 129 U. S. 590; 52 Miss. 281; 10 Neb. 158; 23 Neb. 697; 59 Ind. 460; in all of which the reconversion from United States securities into current funds, immediately after the completion of the assessment, was held to be conclusive evidence that the change had been only a temporary shift or device to avoid and evade taxation, and as such void. It would have been otherwise if the change were an honest, *bona fide*, permanent investment in non-taxable securities. Our opponent may argue, therefore, that the principle sustained in these cases is not applicable or pertinent to the case at bar, for the reason that the change from promissory notes for the loans,

here, to checks is not *temporary*, but *permanent*. This difference, however, does not in any way militate against the application of the principle to the circumstances of the present case, as will be shown by the following cases:

In 22 Lawyers' Annot. Reps., 709 (*Sheldon et als. vs. Pruessner*) it was decided by the Kansas Supreme Court that:

> "1. The Courts in due administration of justice will not enforce a contract in violation of law, or permit a plaintiff to recover upon a transaction against public policy, even if the invalidity of the contract or transaction be not specially pleaded. 2. Where a mortgagee, residing in this State, owns and has in his possession a note for $1,700 secured by a mortgage upon real estate in this State, and pretends to transfer by merely endorsing his name thereon, but without actually delivering the same, such note and mortgage to his father in another State, without any demand being made upon him to do so, to secure $450 and interest for prior borrowed money, *but really for the purpose of evading the payment of taxes justly due the State. Held* that in an action brought in the name of the father to recover upon the note and mortgage, the mortgagee, *on account of his acts in evading the payment of taxes, and thereby defrauding the revenue of the State,* cannot have any recovery in the name of his father or otherwise on any part of the note or mortgage belonging to him. *Held* also, that if the father did not have any knowledge of such transfer, and his name is used to collect such note and mortgage without his consent, or if he merely accepted the note and mortgage as *particeps criminis, to defraud the revenue laws, no recovery of any amount thereon can be had in his name.*" Syllabus. (The italics are our own.)

The Court said (p. 712), citing 1 Sharswood Blackstone, 7 Kan., 210; 37 Cent. L. J., 313; 15 Cal., 389; 14 Kan., 580; 19 Am. Rep., 107; 14 Nev., 175; 33 Am. Rep., 548; 15 Nev. 114:

"As before stated, if the note and mortgage had been transferred in good faith as a gift, sale, or as collateral security, without any wrongful intent or purpose on the part of Henry to defraud the revenue of the State, the whole amount might be recovered by any owner or holder of the same."

So in 39 Iowa, 228, (*Waller vs. Jaeger et al.*):

"Where the purchaser of real estate executed a lease to the vendor, stipulating that at any time within five years the latter should have the privilege to purchase, and that meanwhile he should pay all the taxes upon the leased property; *Held* that the transaction did not constitute a sale, and the intention of the vendee was to make a loan in such a manner as to avoid the payment of taxes. The city council properly assessed the real estate to the vendor, and the consideration of the alleged sale to the vendee as money and credits." (Syllabus.)

The Supreme Court of Iowa said (p. 234):

"Yet we feel constrained to hold that the circumstances of this case justified the committee of the council in the conclusion that the consideration named in the several conveyances to plaintiff was a mere loan to the respective parties named, and *that the form of the transaction was adopted merely to exempt the amount of the loan from liability for taxes. The plaintiff had money to loan. He was anxious to avoid the payment of taxes.*"

We italicize the clauses which fit the present case at bar.

8 Oregon, 338 (*Poppleton vs. Yamhill Co.*) decided that:

"If a taxpayer, having a large amount of notes and mortgages, in order to escape the payment of taxes on the same, borrows a sum of money of a person residing out of the county, and deposits with his creditor such notes and mortgages, for the purpose of avoiding

the payment of taxes on the same; and such deposit or transfer is a fraud on the revenue of the county." (Syllabus.)

The Court based its decision (p. 340) on the question as to whether the transaction was intended to avoid and evade taxation on the following circumstances:

> "1. The security was greatly disproportioned to the amount of money borrowed, which may have been taken as a circumstance by the board. * * * 2. The evidence shows that Poppleton continued to loan money in large sums, after the giving of this note of a thousand dollars, and shows that he was in circumstances to pay this note, which shows that it was not necessity which compelled him to deposit this large amount of notes as security for a thousand dollars. This tends to show that so large a deposit was not necessary to secure this loan. 3. The evidence shows that one of the large notes deposited by him as collateral, that is the note of L. A. Smith *et al.* for two thousand two hundred dollars, was taken by him from the bank and eight hundred dollars collected on it. This is evidence tending to show that he had control of these notes, and from these facts the board may have come to the conclusion that the transfer to De Lashnutt and Oatman was not in good faith, and to avoid the payment of taxes on this large amount of property."

Thus with no direct positive nor affirmative proof, before it, showing the intention of plaintiff to avoid or evade taxation, the Supreme Court of Oregon concluded, from the circumstances alone accompanying the transaction, that there was the intention to avoid and evade taxation, and defraud the revenue, altho' the shift adopted here was a permanent one and not merely temporary.

In 15 Nev., 115 (*Drexler vs. Tyrrell*):

> "Upon a review of the testimony, *Held* sufficient to show that the mortgage sought by plaintiff to be fore-

closed, was at the request of the mortgagee, executed to a citizen of California for the sole purpose of preventing an assessment and of evading the payment of taxes, in the State of Nevada upon the money at interest secured thereby. * * * It is the policy of the revenue laws that all property within the State, except such as in terms exempted shall be taxed; and any mortgage or contract entered into for the sole purpose of placing property, otherwise taxable, beyond the operatino of the revenue law, is oposed to that policy, and therefore illegal." Syllabus).

The Supreme Court of Nevada said:

"It must follow, that any contract, arrangement, or device, entered into for the sole purpose of placing property, otherwise taxable, beyond the operation of the revenue law, is directly oposed to the only policy of that law. And if there is one statute more than another of the policy of which Courts should not countenance an evasion, that one is the revenue law." (Syllabus.)

And here also the shift adopted was permanent and not merely temporary.

On page 120, Drexler, the plaintiff, testified that the making of the mortgage to Lathan, instead of to himself (Drexler) was not so done to avoid taxation, saying, "It was not to avoid any taxes," and the trial Court so found, "and that said note was not made in the name of James H. Lathan for the purpose of defeating taxation by the State of Nevada, or of defrauding the revenue of the State, or for the purpose of defrauding the revenue of the State out of any tax due or to become due upon the mortgage securing the same" (p. 119), and on p. 122 the trial judge said: "Mr. Drexler cannot be supposed to have intended to defraud the government." And yet the Supreme Court of Nevada, looking at all the circumstances of the case, decided (p. 123): "In our opinion, the testimony of the plaintiff, as well as defend-

ants, shows conclusively that the mortgage was executed to Lathan solely for the purpose of evading the payment of taxes upon the money at interest secured therby, and that such purpose was fully accomplished," thus negativing the testimony of the plaintiff when he testified, "It was not to avoid taxes."

In 5 Nebraska, 401, *Bellinger vs. White,* a case in which the plaintiff attempted to avoid taxation on a homestead entry, by refraining from perfecting his title, the Court said:

> "He who seeks the interposition of a Court of Equity to restrain the collection of a tax on his real estate on account of its alleged illegality, must bring himself clearly within some recognized rule of equity jurisdiction; and he cannot be permitted to allege his own failure to perfect his title in a case like this, as a ground on which to base a claim for relief."

Besides these decisions, there is another by the Supreme Court of one of the Western States, in which it was held that a change from a security by mortgage, which was taxable under the statute of the State, to a sale with an equity of redemption, which was not taxable under the Revenue Statute *eo nomine,* was an attempt to evade taxation, and a fraud on the revenue of the State, which would not be sustained by the Courts. The memorandum or note of this last decision, we have mislaid or lost, and cannot therefore cite it at the time of writing this brief, but if found hereafter, we will furnish it in print to this Honorable Court. All these cases last cited, and quoted from, strongly support our position that where the change is made, not for *temporary* purposes, but as a *permanent* one, the Court will not sustain it, where the circumstances show, as in the case at bar, that the change is effected or adopted in order to avoid taxation, and defraud the revenue, by any such device or shift.

In 10 Neb., 158 (*Jones vs. Seward Co.*), already cited, the plaintiff purchased through a bank in New York, government bonds which with the premium amounted to $4,650, on February 29th, 1876. The bonds were sold on the seventh of March of that year, and it was held "a mere device to escape taxation, and that the money was taxable." It was "further argued" on behalf of the plaintiff (p. 155) "that the purchase of the bonds was in the ordinary course of business and not to evade taxation, referring to the evidence, particularly to the ledger, showing purchase of bonds other than those in question, in 1873 and 1876." In passing upon the question of fraud on the revenue and the evidence thereof, the Supreme Court of Nebraska said (p. 158):

> "But it is said fraud is never presumed, but must be proved. This is true. But in what manner is it to be proved? Judge Story says, 'Fraud, indeed in the sense of a Court of Equity, properly includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an unconscientious advantage is taken of another.' Story's Eq. Juris., Sec. 187. And in speaking of the proof it is said, 'on the other hand, neither of these Courts insists upon positive and express proof of fraud; but each deduces them from circumstances affording strong presumptions.' *Id.* Sec. 190. In but few instances, comparatively, can fraudulent intent be shown by direct testimony, and therefore it is generally established by circumstantial evidence. In our opinion the testimony establishes the fact that the bonds in question were purchased by the plaintiff, not with the design of making a permanent investment, but for the sole purpose of avoiding taxation. If we go back to the cases already cited, we will see that these principles were applied in all those cases."

So in 9 Kansas, 235 (affirmed by U. S. Sup. Court in 91 U. S., 206), it was held that all the circumstances of the

case showed that "the whole transaction was for the sole and express purpose of escaping taxation on the funds so used in 1870" (p. 238), and this conclusion was sustained by the Supreme Court of Kansas, although the opinion seems to disclose no positive or direct proof that the object was to avoid or evade taxation.

In 15 Nev., 115 (*Drexler vs. Tyrrell*) the plaintiff executed a mortgage to a person resident in California. The plaintiff testified on p. 120 "it was not to avoid any taxes," and yet the Supreme Court of Nevada decided from all the circumstances of the case that there had been an attempt to avoid taxation.

In 23 Neb., 700 (*Dixon Co. vs. Halstead*) there was no proof that the U. S. bonds were purchased a month before the assessment for the purpose of evading taxation, but held that if it had been so proved, "any evasion of that kind to escape his just proportion of the taxes imposed by law, should be frowned upon by the Courts, and a party not permitted to shelter himself behind such temporary change in the character of his funds."

In 8 Oregon (*Poppleton vs. Yamhill Co.*), the plaintiff deposits with his creditor an amount of notes and mortgages to the amount of $12,209.25, to secure a note of $1,000, and denied that it was done to avoid or evade taxation. The Supreme Court of Oregon decided that it was an attempt to avoid taxation because:

> "1st. The security was greatly disproportioned to the amount of money borrowed. * * * 2. The evidence shows that Poppleton continued to loan money in large sums, after the giving of this note of a thousand dollars, and shows that he was in circumstances to pay this note. * * * 3. The evidence shows that one of the large notes deposited by him as collateral, that is, the note of L. A. Smith *et al.* for two thousand two hundred dollars, was taken by him from the bank

and eight hundred dollars collected on it. This is evidence tending to show that he had control of these notes."

In 39 Iowa, 229 (*Waller vs. Jaeger*) a "purchaser of real estate executed a lease to the vendor, stipulating that at any time within five years the latter should have the privilege of repurchase, and that meanwhile he should pay all the taxes upon the leased property, *Held* that the transaction did not constitute a sale, and that the intention of the whole vendee was to make a loan in such a manner as to avoid the payment of taxes." The Court (p. 234) decided that:

> "The form of the transaction was adopted merely to exempt the amount of the loan from liability for taxes. All the circumstances of the case are consistent with this conclusion. The plaintiff had money to loan. He was anxious to avoid the payment of taxes. * * * But the strongest circumstance, perhaps of all, is the fact that when plaintiff went before the committee of the council in support of his petition to be discharged from this assessment, he contented himself with merely detailing the fact and circumstances connected with the execution of the deeds and leases, and did not claim that there was a *bona fide* sale, nor that the transaction was a mere loan."

In the case at bar, as we have already noted, the complainant in the case at bar, never applied for a hearing before the reviewers, and altho' it pleaded that it had been refused a hearing, which was denied by respondent, it produced not a syllable of proof to support the allegation of refusal.

We have already herein alluded to the fact that complainant utterly failed to produce any corroborative evidence at all to substantiate the statement of its witness Breton that first, the change from promissory notes to checks was made as alleged by its witness early in 1900; second, that the change was made at the earnest solicitation of its

clients, the borrowers; and third, that the change was made so as to conform to the practice of the banks in loaning money. Upon the first point, a mere reference to the books of complainant would have refreshed his memory as to the exact date when the new form of doing business went into operation. Upon the second point it was in its power to produce some of the witnesses to establish the fact that they as borrowers earnestly insisted on giving checks instead of promissory notes, or at least to have given the names of some of the borrowers, who could have been summoned by respondent to test the truth of Breton's assertion. Upon the third point it was entirely within the power of complainant to have summoned officers of banks and by their testimony to have proved that the banks employed the same method of taking checks of the borrowers, instead of promissory notes, for loans made by the banks, or at least to have mentioned the names of some of the banks so doing, in order that respondent might have summoned the officers of the banks named, in order to test the truth and accuracy of the witness' statement. None of these important and necessary things did complaiannt do. Its failure so to do, under the well recognized law of evidence, raises the presumption that if this corroborative and cumulative proof had been attempted, it would have contradicted, and not confirmed the testimony of the witness on these points.

> "From the failure of a party to produce evidence within his control, and which it is his duty to produce, a presumption or inference arises that if the evidence were produced it would be unfavorable to him, and this has been applied equally in criminal as in civil cases." 22 Am. and Eng. Encyc. of Law, (new), p. 1257, and authorities in notes 3 and 4, especially those of Federal cases.
>
> "And it may be presumed that if more satisfactory

evidence had been given, it would have been detrimental to the party who fails to produce it, and would have laid open deficiencies and objections which the most obscure and uncertain testimony was intended to conceal." *Ibid* 1258, and authorities in note 7, among which are *Clifton vs. Howard* (U. S). 41 How. 242; *The Silver Moon Husk* (U. S.).

So in 23 Neb., 698, *Dixon Co. vs. Halstead*, it was "Held, that if the change in the character of the funds was merely temporary—the object being to escape taxation—that such assets would be liable to be taxed, and that the question of the *bona fides* of the transaction was one of fact for the jury to determine." *Jones vs. Seward Co.*, 5 Neb., 561.

262, 22 Fed. cases No. 12,856. See also *Kirby vs. Talmadge*, 160 U. S., 379; *Pac. Coast S. S. Co. vs. Bancroft Whitney Co.*, 94 F., 180; 36 C. C. A., 135; 54 F., 481; 4 C. C. A., 458; *Same vs. Siefred, Id.; Same vs. Matthews*, 54 F., 486, 4 C. C. A., 459; *Same vs. Conley.*

This principle applies with peculiar force to cases of fraud, as in the case at bar, where strong circumstantial evidence establishes a fraud upon the revenue, and throws the *onus probandi* on the complainant to establish his contention. Another potent reason is fatal to complainant's contention. Strong circumstantial evidence, as in this case, will overcome even the positive evidence of *several* witnesses. *U. S. vs. Pacific Exp. Co.*, 15 F., 867; *U. S. vs. Searcy*, 26 F., 435. In the case at bar the strong circumstantial evidence should certainly overcome the meagre, and indecisive testimony of a single witness.

There is a rule in equity, also, which applies to this cause.

"An answer in equity so far as it is responsive to the bill, is to be taken as evidence in the suit, and to overcome it the complainant must prove his allegations by two witnesses, or by one witness supported by cor-

roborating circumstances." 7 Am. and Eng. Encyc. of Law (new) p. 868.

"The rule in equity is that the responsive denial of an answer must be overcome by two witnesses or by evidence equivalent thereto; and the overwhelming weight of authority is that this equivalent evidence must be one witness and corroborating circumstances." 1 Enc. of Pl. and Prac., 932, and authorities in note 3 (p. 932) and note 1 (p. 933) and a multitude of Federal decisions in support of the text (p. 935).

In conclusion we submit that we have abundantly established:

1. That the taxation herein involved is not repugnant to the Constitution of the United States;

2. Nor to the Constitution and jurisprudence of the State of Louisiana;

3. That complainant's action is a mere shift to evade taxation, and that the decision and judgment of the lower Court should be reversed and the assessment sustained, with the ten per cent. attorney's fees allowed under Sec. 56 of Act 170 of the General Assembly of Louisiana, pp. 373, 374. On page 15 of Record, respondent tax collector in answer herein, "prays that there be awarded to the attorney of the State Tax Collector ten (10) per cent. on the aggregate amount of the tax and penalties herein involved, or so much thereof as may be decreed by this Honorable Court to be maintained." This is prayed for under Section 56, paragraph 2 of Revenue Act No. 170 of 1898, of the General Assembly of the State of Louisiana, pp. 373 and 374, which reads as follows:

"That the attorney at law who represents the tax collector, or tax collectors, in all proceedings for the reduction of assessments and collection of taxes (license taxes excepted) and in all injunction proceedings wherein the tax collector or tax collectors are sought to

be restrained from the collection of taxes, shall receive a compensation of ten per cent. on the amount collected, calculating same upon the aggregate amounts of taxes and penalties so collected as the result of aforesaid proceedings. The aforesaid commission to the attorney at law shall be paid by the party against whom the judgment is rendered in whole or in part, and shall be collected by the tax collector as cost at the same time that the taxes and other penalties are collected."

Respondent would therefore ask that in case this Honorable Court should reverse the decision of the lower Court, that this Honorable Court would in its decree award the ten (10) per cent. as prayed for. All of which is respectfully submitted.

H. G. DUPRE,

E. K. SKINNER,

F. C. ZACHARIE,

Solicitors for Respondents and Appellants.

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Supreme Court of the United States.

OCTOBER TERM, 1903.

Office Supreme Court U. S.
FILED
NOV 9 1903
JAMES H. McKENNEY,
Clerk.

No. 157.

STATE BOARD OF ASSESSORS OF THE PARISH OF ORLEANS,

THE CITY OF NEW ORLEANS ET ALS., APPELANTS.

versus

THE COMPTOIR NATIONALE D'ESCOMPTE DE PARIS, APPELLEE.

To the Honorable the Supreme Court of the United States:

Now come the State Board of Assessors of the Parish of Orleans, the State Tax Collector of the First District of the Parish of Orleans, the City of New Orleans, and the Treasurer of the City of New Orleans, appellants in the above entitled and numbered cause, through their undersigned solicitors, and show to the Court that they desire permission to file a supplemental brief, so as to discuss more fully the issues in said cause.

Wherefore, they pray that this Honorable Court may be pleased to grant them permission to file a supplemental brief in this cause, and that they be granted a delay of seven days from the allowance of this motion within which to file such brief.

Respectfully submitted,

F. C. ZACHARIE,

H. G. DUPRE,

Solicitors for Appellants.

(18,732.)

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 157.

THE STATE BOARD OF ASESSORS OF THE PARISH OF ORLEANS,

THE CITY OF NEW ORLEANS ET ALS., *APPELLANTS*,

versus

THE COMPTOIR NATIONALE D'ESCOMPTE DE PARIS.

Appeal from the Circuit Court of the United States for the Eastern District of Louisiana.

SUPPLEMENTAL BRIEF OF RESPONDENTS AND APPELLANTS.

As our opponent, counsel for complainants and appellees, in his oral argument, touched upon some points to which we were unable to fully reply in the limited time allowed for our closing, we find it necessary to submit the following supplemental brief in answer to those points.

To facilitate your honors by convenient reference to the

decision of the Louisiana Supreme Court, in 52 An., we premise by printing herein the following full

OPINION OF THE LOUISIANA SUPREME COURT.

SUPREME COURT OF LOUISIANA.

No. 13,310.

52 An. p. 1319, et seq. May, 1900.

SYLLABUS.

Non-negotiable notes representing loans in Louisiana, made by the agent of a corporation doing business therein, when kept within the State by the agent, may be subjected to taxation by the law of the State in which they are held City of New Orleans vs. Stempel. (175 U. S. Reports, 309.) Bluefields Banana Company vs. Board of Assessors, 49th An., 43.

Appeal from the Civil District Court, Parish of Orleans. —*St. Paul, J.*

Harry H. Hall for plaintiff, Appellant.

James J. McLoughlin, Assistant City Attorney, and *Samuel L. Gilmore,* City Attorney, for the City of New Orleans, Defendant, Appellee.

Francis C. Zacharie for the Tax Collector and Board of Assessors, Defendant, Appellees.

Edwin T. Merrick, on Petition for Rehearing, *amicus curiae.*

The opinion of the court was delivered by

NICHOLLS, C. J. The plaintiff is declared in its petition to be a corporation duly organized under the laws of the Republic of France, a citizen thereof, and therein domiciled in the City of Paris, and represented in the suit by its agent, Albert Breton.

Its allegations are that during the year 1897, petitioner, from its said domicile in Paris, through its said agent, transacted in the City of New Orleans a brokerage business, paying thereon a due and proper license tax.

That on the assessment rolls of the First Municipal District, Third Representative, Fifth Assessment District, Square No. 227, it was assessed for the year 1898, as follows:

"Moneys" loaned on interest, all credits, etc..	$50,000.00
Money in possesion.....	50,000.00

That all "credits" for "moneys loaned on interest" are taxable at its domicile in Paris, where it pays its taxes, and not at the domicile of its debtors in the City of New Orleans, and that, therefore, said item *"money" loned on interest, all credits, etc.,* was, and remains, an illegal assessment.

That its moneys in possession did not, during the year 1897, exceed, on an average, more than $20,000.00, nor did it exceed that amount at the time for making the assessment in 1898.

That it made due and timely application to the Board of Assessors for the Parish of Orleans, and later to the Committee on the Revision of Assessments for the Common Council, to cancel, from the said assessment rolls of 1898, the assessment of *"money loaned on interest, all credits, etc., $50,000.00," and to reduce* the assessment made against it of "money in possession" from $50,000.00 to $20,000.00, and its applications to cancel and reduce said assessments were, without just cause, rejected.

Petitioner annexes copies of said applications.

Its prayer is that the Board of Assessors, by its president; the State of Louisiana, by its Tax Collector, and the City of New Orleans, by the Mayor, be cited to appear and answer this petition, and that, after due proceedings had, petitioner have judgment in its favor, ordering the cancellation from the assessment rolls for 1898, of the assessment against it for "money loaned on interest, all credits, etc., $50,000.00" (fifty thousand dollads), and reducing the assessment against it of "money in possession, $50,000.00, to $20,000.00 (twenty thousand dollars), and for costs, and all general relief.

The defendant answered by a general denial.

The District Court rendered judgment partly in favor of

the plaintiff, the Comptoir Nationale D'Escompte de Paris, and partly against it, as follows:

"It is ordered, adjudged and decreed that there be judgment in favor of the plaintiff, the Comptoir Nationale D'Escompte de Paris, and against the defendants, the State Tax Collector for the Upper or First District of New Orleans, the Board of Assessors for the Parish of Orleans, and the City of New Orleans, ordering and decreeing that the assessment for the year 1898, against plaintiff on 'money in possession,' be reduced from fifty thousand dollars to twenty thousand dollars, and that as to the item 'money loaned on interest, all credits, etc., fifty thousand dollars,' the demand of plaintiff be rejected.

"It is further ordered and decreed that the ten per cent. attorney's fees allowed by law upon the State tax on said amount of 'money loaned at interest, all credits, etc.,' be taxed against the plaintiff, and that all costs of this suit be paid by defendants."

Plaintiff appealed.

Alfred Breton, agent of the plaintiffs in Louisiana, being upon the stand as a witness, testified substantially as follows:

The plaintiff is a French corporation domiciled in Paris. Its business in Louisiana through witness' agency was brokerage in money, stocks and bonds. It has no capital in Louisiana. If the company loans money on the agricultural products of the State, it receives for the money which it loaned, what are called exchange notes, of which the following marked "C 2" are the regular forms:

$..... ....., 189..

..... promise to pay to Comptoir Nationale D'Escompte de Paris.....for value received with interest at the rate of.....per cent. per annum until paid.

This note is not negotiable and is secured by pledge of the securities mentioned on the reverse hereof, and in case of its non-payment.....or should the drawer hereof when called on, refuse or fail to keep the margin hereon good, the Comptroller National D'Escompte de Paris is authorized to sell the said securities at public or private sale, with-

out recourse to legal proceedings, and to make any transfers that may be required, applying the proceeds of sale towards payment of within note.

C-2: New Orleans, ...189..

No.:.....

Received from the agent of the Comptoir National D'Escompte de Paris.....dollars, on account of ..... exchange on .....arising from shipment and from measures taken preparatory to the shipment of .....per .....for .....which is covered by policies of insurance against fire and marine risks and which policies are hereby bound and pledged specifically to .....for the fulfillment of the contract to furnish the exchange agreed to and for the money here advanced in case of the non-completion of the contract from any cause.

$.....

The company does not loan any money except upon notes of that kind or obligation of that character. Money is loaned principally to cotton and grain people; it lends in New Orleans, Shreveport and all around the Southern States. At least one-half the money loaned is loaned on cotton and grain in transit which is not in New Orleans. As a rule the money loaned is on cotton and grain to be exported to Europe.

Witness buys foreign drafts on the other side durig the time cotton is in transit; they want money because here as a rule they pay for the cotton as against the railroad bill of lading, and the company through witness loan thereon money; that is for the cotton outside of New Orleans.

The company takes a pledge of the bill of lading and the cotton is brought to New Orleans, Mobile, and Galveston; to different parties. The foreign bill of lading is attached to the draft. The money is loaned on that bill of lading for the draft drawn for the cotton or grain. That is the company's business, for cotton in transit. For this cotton and grain that the company advance on the company takes the bill of lading first, then witness buys a foreign draft; the

railroads' bill of laiding are exchanged for the ship's bill of lading; they simply purchase the bills of lading.

As to other advances that the company makes it takes documents such as the two marked "C-1" and "C-2," offered in evidence, different in different cases.

Supposing the company to loan ten thousand dollars to a man in the country, witness takes the receipt for the cotton where it is to be shipped in a few days, and where the cotton is not to be shipped in a few days, he takes the note, a note like the one marked "C-1."

The notes are not sent to Paris. Witness keeps them on trust; they are not negotiable; they are kept in trust for the account and benefit of the Comptroller in Paris. Witness is simply a clerk, and has no individual interest in the business. The company has no capital in Louisiana.

Being asked whether he could tell what monies he had at any time in the handling of his business and wants, he answered "that the balances were returned to Berlin, London and New York, from there." Being asked how he got it, he answered: "By drawing according to credits—the Comptoir had arrangements for it."

He further testified that the average amount of money he had in bank, year in and year out, was twenty thousand dollars; that the company had been doing this business in Louisiana since 1895, that the highest assessment which had been placed upon it by the Board of Assessors prior to 1899, upon the company's "money in possession in bank, etc.," was twenty thousand dollars altogether; they raised in 1898 to fifty thousand dollars.

The company had no more money in 1898 than before. At the time the present assessment was made in March, 1898, the company did not have more than $20,000. The company made a verified application for reduction of assessment.

The company never loaned money on due bills, to cotton factors, it loaned money to factors on cotton, not due bills, on cotton in presses. Witness supposed all the cotton was exported. The factors, in many instances, came back, paid the loans and took back the cotton receipts.

The company had loaned money on domestic products

not exported from the city, and things of that kind; people had borrowed money in Louisiana and paid it back without any foreign exchange appearing in the transaction, but not frequently.

Being asked on cross-examination, whether the company's entire business was confined to foreign bills of exchange, witness answered "that every thing was foreign exchange with him." Being asked "whether there was any foreign exchange in loaning to cotton men?" he answered: "Yes, when he got the money from Paris."

Witness stated the company loaned money to people in Louisiana and they paid it back there; they gave the company an obligation to show that they owed the company that money; as a rule the company collected it when it was due (the note), witness was agent for the company with full power of attorney, to represent it; he was no more than a mere clerk, he could draw more than twenty million if he chose. If a person wanted ten or twenty thousand dollars he did not send the papers to Paris to find out whether he could make the loan. He had no discretion, the company wrote to him what to do. The company loaned money on sugar. If a man went to him with a warehouse receipt for one thousand hogsheads of sugar and wanted to borrow $20,000 on it, he could lend it without writing to Paris, if the house was good, and according to the instructions he had received beforehand.

If his instruction from Paris should say he could loan on sugar and cotton and grain, he would loan the money if he thought the collateral was good.

He did not know whether the sugar was exported. The parties would come in, pay their loan and take the receipt away, and pending that time witness held the receipt, and the note. The company did the same thing with cotton and grain. A great deal of the company's business was done in that way.

In addition to this, witness bought bills of exchange on London and Paris and other places, to which are attached bills of lading; that was a large part of the company's business.

The company did not handle commercial paper, it did not

make any local discounts. It had loaned money on state or city bonds, but very seldom. Sometimes the cotton people got rid of their cotton and wanted some money to advance to the interior, and they replaced their cotton by bonds, but very seldom; it had never advanced to the banks in New Orleans; it had never loaned on United States bonds, but would do so willingly.

When money was loaned, secured by collateral bonds, witness would keep the securities and the note attached in Louisiana; he would keep them himself for the Comptoir; the notes were kept here, not sent to Paris.

When loans were made he reported them to Paris; he would not report them after they had been paid back. He did not, in making loans, fix any rates of discount or rate of interest; he did not discount.

The company knew of the loans ten days after they were made; the money was often paid back before the mail reached Paris.

Witness drew bills of exchange on Paris for the funds he required here; he deposited in New York as a rule; he kept some money to his credit in bank in New Orleans; an average of about twenty thousand dollars; he could obtain a loan if he wanted it; witness meant that if all his outstanding checks were paid, there would only be twenty thousand dollars to his credit in bank.

His checks on the New Orleans banks amounted in the course of a year in the millions. There was this average of twenty thousand dollars without reference to any special time; very often he was overdrawn. The $20,000 was about the average balance he carried in bank, after deducting the checks that were outstanding.

The company loaned money on cotton, sugar and grain, on warehouse receipts and bills of lading; it loaned money also on city and State and United States bonds. Witness knew of no other character of loans on which it advanced money; it did not lend money to planters or refiners or manufacturers; or loan on mortgage or vendor's lien. The average balance in bank, kept in bank, was $20,000, but the deposits in the year ran up in the million.

Witness stated that on one occasion he had loaned to Mr.

Nicholls on collaterals, premium bonds and State bonds, different collaterals, that the company would not loan on goods, ware and merchandise; that he would not loan on them but that he would sometimes accept them against a credit because sometimes a client wished to make the exchange of a collateral; he would allow a substitution of merchandise for bonds, but only for the time being so as to enable parties to handle their goods.

The company was not carrying on a general loan business; three-fourths of the business was cotton and grain, the company was not carrying on a general loan business outside of the foreign exchange business; the whole thing was a foreign exchange business and there was nothing of that kind in the company's books.

The following questions were asked by the State and answered by the witness.

"Q.—You say that the foreign exchange business is when a person comes with warehouse receipts for sugar or anything else, that not having more than twenty thousand dollars, in case you desire more you draw a bill of exchange on Paris or London or New York?

"A.—Yes, sir.

"Q.—And thereupon you take the obligation of this person together with his security, and you keep them here in your own vault?

"A.—Yes, sir.

"Q.—It is paid here?

"A.—Yes, sir.

"Q.—And if it is not, you take the collateral?

"A.—Yes, sir.

"Q.—That is what you call it?

"A.—Yes, sir.

"Q.—You don't refer the matter to Paris?

"A.—Oh, yes.

"Q.—If you haven't got the money here you draw a bill of exchange on Paris?

"A.—Yes, Paris—Berlin. may be New York—any place.

"Q.—You get this bill of exchange cashed here?

"A.—No, not here, but in New York, as a rule for I buy exchange there.

"Q.—And you take this money and you loan it out?

"A.—Yes, sometimes I loan it, and sometimes the clients draw it themselves.

"Q.—In other words then, all the foreign exchange has to do with this portion of the business, is that you get the money through bills of exchange.

"A.—Foreign exchange—I get the money through foreign exchange. Yes, sir; I get it through foreign exchange.

By the court:

"Q.—In loans of that sort when you hold documents such as C-1 and C-2, do they as a rule average more than fiifty thousand dollars?

"A.—No, sir; not at one time.

"Q.—Have you an idea what they average the year through?

"A.—A big amount.

"Q.—I mean the amount on this kind of note and this sort of contract that you have on hand at any one time; are they as much as $50,000 on an average?

"A.—Yes, sir; and more sometimes.

By Mr. Hall (plaintiff's counsel):

"Q.—I understood you to say that the Comptoir keeps no money here for the purposes of this exchange business, but that when you make a loan you draw on Berlin or Paris or whichever is most available and you sell that exchange to a bank or cash the exchange here, or in New York as the case may be, and that money is immediately paid on that loan and therefore there is no need of keeping a bank account of any large sum?

"A.—Yes, sir; that is right.

"Q.—And when that money is loaned on foreign bills of exchange or bills of lading, they are sent to Paris immediately?

"A.—Yes, sir; and different places by the first mail.

ADMISSION.

It is admitted that the undisputed part of this tax for the year 1898 has been paid without prejudice to the rights of any party to the suit, and the receipt of the city for the sum of $414, being taxes upon $20,000 money in possession,

and that the offer was made to pay on the same tax to the State tax Collector and it was refused."

By Mr. McLoughlin, (Assistant City Attorney):

"Q.—The question that was asked you and the answer you gave in reference to bills of exchange only refers to the bills of exchange you purchased here?

"A.—Yes, sir.

"Q.—You buy bills of exchange outright?

"A.—Yes, sir; through the bills of exchange I send the money back from where I borrow it.

"Q.—You buy bills of exchange outright?

"A.—Yes, sir.

"Q.—You don't mean you loan money on bills of exchange on Europe in New Orleans?

"A.—No, sir.

"Q.—You don't loan money on bills of exchange?

"A.—No, sir; if it is not in proper form or the goods are subject to depreciation, I may loan part of it."

OPINION.

We were told from the bar that the only question submitted to us for decision is, whether the non-negotiable notes taken and held by the plaintiff under the circumstances disclosed by the evidence, are liable to taxation; that should the court be of the opinion that they are taxable, the amount claimed from the plaintiff on that item is correct.

"Plaintiff's contentions are summarized in the *syllabus* of his brief, as follows:

"Plaintiff is a French corporation domiciled in Paris, France. It is engaged in the transaction of an exchange and brokerage business in the City of New Orleans, being here represented by an agent.

"It loans money, upon bills of lading covering cotton and grain sent from interior points of Louisiana and neighboring States, to Galveston, New Orleans and Mobile, for shipment to Europe.

"And sometimes it loans money on warehouse receipts of such agricultural products, while stored preparatory for shipment.

2.

"All the money which it lends is raised by selling its drafts of exchange to New Orleans banks, such bills of exchange being drawn upon Paris, London, Berlin or New York, wherever most advantageous, and the money thus borrowed from the banks is paid by plaintiff to the holders of the cotton or grain in question.

3.

"To meet these drafts of exchange, while the cotton and grain is on its way to Europe, plaintiff buys drafts of exchange on the foreign market upon which its original draft was drawn, and with the proceeds of said purchased drafts of exchange meets its own drafts.

4.

"In the few instances when the course is not pursued, plaintiff raises money by drawing a draft of exchange on itself in Paris, and has the same cashed by local banks. It has no funds nor capital of any kind in the City of New Orleans, except an average fluctuating balance growing out of these transactions, which in no case and at no times, exceeds $20,000, and upon this $20,000 it pays taxes as upon money in hand.

5.

"Plaintiff, therefore, for all funds which it utilizes in this city and the adjacent States, is primarily a borrower from local banks, and ultimately, it repays its loans with money raised in Europe or New York.

6.

"For the moneys loaned in this way it receives non-negotiable promissory notes of hand, made payable to it, and not to order. It has been assessed for the first time in 1898, upon these notes as upon 'credits.' Such assessment and the consequent tax are illegal, because such credits are incorporeal and intangible, and can have no independent *situs* of their own; but necessarily follow and attach to the domicile of the foreign plaintiff in France.

7.

Intangible property has no actual *situs*. If a credit for the purpose of taxation be assigned a *situs*, it must be the place where it is owned, not the place where it is owed. To make it follow the debtor instead of the creditor is to tax property instead of wealth. 25 Ohio State, 1; 3 Oregon, 13; 2 Oregon, 327; 16 Cal. 167; 23 Cal. 138; 3 McCord, 378; 50 Ga. 387; 33 Ga., 113; 23 Ga., 566; 3 Colorado, 349; 96 U. S. 445; 9 Wheaton, 907; 15 Wallace, 320; 19 Md. 22; 29 Md. 49; 7 Ohio, 52; 10 Allen, 101; 28 Vermont, 188; 42 Conn., 426; 25 Cal. 602; 38 Cal. 466; 2 Dutcher, 184; 4 Woods, 207; 12 Iowa, 539; 22 Fed. Rep., 602; 11 Ann., 268-282; 38 Cal., 461; 35 Cal., 282; 29 Cal., 533; 25 Cal., 603; 39 Conn., 176; 25 N. J., 531; 26 N. J., 564; 54 Iowa, 57; 96 U. S., 452; Cooley on Taxation, 1; 15 Wallace, 319; Colley on Taxation, 21; 52 Conn., 26; 426 Ohio, 1; 101 U. S., 499; 27 Grattan, 354; 173 U. S., 203· 15 Wallace, 323.

8.

"As held in 15 Wallace, 323, the true test of the taxability of a credit held by a non-resident is:

"Does such credit, by general usage, acquire the character of, and is it treated as property, and does it pass as money wherever it may be?

"State and municipal bonds have this character, and so, possibly, checks upon solvent banks.

9.

"Act 98 of 1886, p. 134.

"Act 85, of 1888, p. 111.

"Act 106, of 1890, p. 121, and

"Act 170, of 1898, only provide for the taxation of property 'situated within the State of Louisiana.'"

And the legislature has not attempted, by any enactment, to localize credits, held by non-residents, the act simply providing that all credits shall be taxed; that provision being limited by the general statement, in all the revenue acts, that only property in the State of Louisiana is liable to taxation.

The evidence establishes that the plaintiff corporation is

pursuing in the city of New Orleans a continuing business through an agency there; that it loans money upon collaterals of various kinds for which the borrower gives the company his non-negotiable promissory notes.

These notes received by the agent are kept by him, until maturity, when they are either taken up by payment in money by the debtor or through exhaustion of the collateral.

The monies so received are reinvested in other loans.

It is claimed that the plaintiff never sends its own monies into this State and there lends them, but that the monies loaned are obtained through foreign drafts or bill of exchange.

We think the particular manner or instrumentality by which the monies used by the plaintiff in the course of its continuing business in Louisiana is obtained is a matter of no moment or significance in the consideration of the question which we are now dealing with.

It, beyond question, loaned monies in Louisiana which for the purpose of the loans were the company's monies, and the borrowers give the company their own non-negotiable promissory notes to represent money received from the company. The notes represent an equivalent amount of money of the company in Louisiana.

Plaintiff claims that these non-negotiable notes are to be considered as being constructively in France, the domicile of the plaintiff company; that a promissory note follows as much the domicile of the creditor as does an open account. That the rule *mobilia sequuntur personam* applies to them and they are no more taxable than if they were in fact in the vault of the company in Paris. This rule in its application to the subject of taxation has been recently exhaustively considered by the Supreme Court of the United States in the case of City of New Orleans vs. Stempel, Guardian, in which our own decisions as well as those of others were collated.

The *syllabus* of that decision declares that "notes and mortgages, the owner of which is domiciled in another State, when they are kept within the State by an agent, may

be subjected to taxation by the law of the State in which they are held."

A non-negotiable note is certainly sufficiently concrete in form to be made an object of taxation. The fact that it may be less valuable in fact than it appears on its face, may effect the estimate to be placed upon it for assessment purposes, but that question is something other than the question of its being a proper object of taxation.

If a person domiciled abroad were to die leaving non-negotiable notes in this State in the hands of an agent, the presence of these notes in Louisiana would authorize the opening of the succession in Louisiana for the protection of Louisiana creditors.

We think the State has as much legal right to subject them being here to the payment of the contribution which it justly claims from all parties receiving the protection and benefit of its laws, who operate their property here for their individual gain and benefit, as any creditor would have.

The rule *mobilia sequuntur personam* is subject to numerous exceptions. Thus, in France, it has been held that "Les prelevements accordés aux heritiers Francais sur les biens situés en France comme indemnité des exclusions resultant de la loi étrangere peuvent etre exerces meme sur les valeurs payable par des banques étrangeres quand les titres soit nominatifs soit au porteur ont été laisses en France par l'auteur commun." (Civ. C. 27, Auot. 1850.)

We think the facts of this case bring it squarely under the decisions in Bluefield Banana Company vs. Board of Assessors and City of New Orleans, 49 Annual, 43, and Parker vs. Strauss, 49 Annual, 1173.

In the former case this court, referring to the corporation claiming exemption said:

"The foreign corporation had an agent here, where it received and where it sold fruit and received the price for the same. Part of the proceeds were withheld in the hands of the agents for purposes incidental to the prosecution of its business, and part deposited to the credit of the company, subject to the check of its local agent. Also for the

prosecution of its business here, and for such other purposes as the company might direct it to be applied to. The company transacted business in New Orleans precisely as did resident business men and firms. It received all the advantages to be derived from the State and city governments which residents received, and we see no reason why it should not be taxed, as claimed in this proceeding, unless there be insuperable legal objections in the way. We find a statute of the State, which by its terms brings them under the operation of State and city taxation, and we are bound to give effect to its provisions unless they be in derogation of the constitution. The unconstitutionality of the act is not pleaded, and we of ourselves, see no unconstitutional features in it. The rule *mobilia sequuntur personam* is a fiction of law, not resting of itself upon any constitutional foundation, and which gives way before express laws, destroying it in any given case, where constitutional requirements themselves do not stand in the way."

There is no parrellism between this case and that of Clason & Company vs. The City of New Orleans, 46 An. 1.

The facts of the case are entirely different. Here the foreign corporation is engaged in a regular business investing and re-investing the monies through an agent in this State.

In the other case, Clason & Co. were merely the agents of an English firm for the purchase of cotton to be shipped by them at once to the firm in Europe.

Instead of paying for this cotton by means of bills of exchange transferred to the vendors which they themselves would have cashed, the agents, for convenience, had the bills cashed, deposited the amount in bank and drew against the funds in favor of the sellers.

For the reasons assigned it is hereby ordered, adjudged and decreed that the judgment appealed from be and it is hereby affirmed.

Rehearing refused."

ARGUMENT.

A careful reading of the foregoing opinion will clearly show that the same defence is being urged here, that was unsuccessfully attempted in that case, and which the Supreme Court of Louisiana negatived and overruled. It is an attempt to confuse two distinct branches of complainant's business, and to make it appear that this assessment sought to be made, and the tax levied here, is on foreign exchange, based on goods *in transit*, and intended *for export*. This is not the case at all. Indeed, under Sec. 1 of Act No. 170 of 1898, p. 347, about the middle of the paragraph, it is especially provided that "goods in transit for forwarding, not on consignment for sale, are not to be assessed," and consequently bills of exchange based on bills of lading for export of such goods are not taxable, and in this cause no such tax or assessment is sought to be levied or made.

The assessment here, and the tax levied, is on *loans of money at interest in* Louisiana made by the complainant, on State or city bonds, warehouse receipts, and other personal property, *not in transit or destined for export*. It is on the same category of loans at interest as may be, and are, made, every day by New Orleans banks, and other corporations, as well as persons, irrespective of the foreign exchange business. And yet, counsel for the complainant tries to confuse these two branches of complainant's business, and may possibly lead this Honorable Court into an erroneous conception of the real question at issue here. The difference between the two branches of complainant's business is plainly illustrated in the record. On p. 40, of the

Record, Exhibit "E" shows the form of the instrument when money is loaned at interest on collaterals, which is the character of loans assessed in this cause, and on p. 41 of the Record, Exhibit "F" shows the form of the instrument when the complainant sells its foreign bills of exchange on bills of lading, or warehouse receipts, of goods intended for shipment, or export abroad. With the latter transactions, this cause has nothing to do. The two kinds of business are distinctively different. In the branch of the business to which this case relates, the Record shows a simple manner of procedure. On p. 26, Breton, complainant's sole witness, is asked:

> Q. "Or did you not lend money on agricultural products of Louisiana stored in different warehouses of the State of Louisiana, which were not to be shipped abroad?"
>
> He answers:
>
> A. "Well, yes, I lent money on agricultural products, some of them I could not know if they were shipped or not; but the bulk of the business done was against products which were to be shipped away from the State of Louisiana."
>
> * * * * * * *
>
> A. "On products which I could not know, whether they were shipped or not."
>
> * * * * * * *
>
> Q. "Did it not lend or advance money on State bonds, United States bonds, or city bonds."
>
> A. "Occasionally on city bonds and State bonds."

This testimony shows that the character of the property on which these loans were made were not foreign shipments, but simple loans, on which foreign exchange was only used in order to enable the complainant to get the

money to make the loans. The assessment on these interest-bearing loans was ony $175,000.00, which is a fair assessment, as the witness testifies, on p. 27 of the Record, that the whole annual business done by the complainant was over a million of dollars, and on p. 26 he had testified that the foreign exchange business on goods destined for export was 80 per cent. of the entire business, and 20 per cent. of the entire business was on mere loans at interest. Thus, according to his own admission, the 20 per cent. of the business done in loans on securities not intended for export or shipment abroad, would amount to over $200,000, entirely aside from the foreign exchange business. But the witness, as well as his counsel, is constantly making the vain and transparent attempt to confound this latter branch of complainant's business with that of foreign exchange sold on products *intransitu*, intended for foreign shipment or export, and to have the court believe that the State and city are endeavoring to levy and collect taxes on that branch of their business which deals with foreign exchange on shipments abroad. And this is artfully attempted by showing that, *sometimes*, in lending money on securities not intended for export, the complainant gives its exchange to the borrower. We have said *sometimes*, because the witness says that often the complainant gets the money itself by having its own bills cashed, and pays the customer in cash, and at other times opens for the business a credit in Paris, on which the customer can draw. On p. 26 the witness, Breton, testifies:

> Q. "When, in answer to the fifth interrogatory, you say the money was obtained by drawing foreign exchange on Europe, you mean to say that the cash

which you lent in the city of New Orleans was obtained by drawing this foreign exchange on Europe and getting it cashed here in the banks."

A. "Getting it in New York."

A. "Yes, sir."

Q. "And that was the money that was lent?"

A. "Yes, sir."

And again, on p. 29, Record:

Q. "The sum and substance, I understand, of the exchange business, is that whatever money you loaned, and in whatever form it might be, the money was raised by exchange?"

A. "Yes, sir."

And on p. 31 of the Record:

Q. "When you put $50,000, we will say, to the credit of one of your customers on your books, does he give you any receipt for your money, previous to your crediting him with that on your books?"

A. "I do not credit him; I pay him."

Q. "You pay him?"

A. "Yes, sir. *I pay him the money.*"

Thus, we see dealing in foreign exchange, or any foreign exchange transaction whatsoever, cuts no figure in the case at bar, except that the complainant realizes the cash which it loans out at interest, by drawing its own bills of exchange, and this in nowise affects the character of the loan at interest. It was on this account the Louisiana Supreme Court said, in 52 La. An. p. 1330:

"We think the particular manner, or instrumentality by which the money used by plaintiffs in the course of its continuing business, *is a matter of no moment, or significance in the consideration of the question which we are now dealing with. It beyond question loaned money in Louisiana, which, for the purpose of the*

loans, were the company's moneys, and the borrowers give the company their own non-negotiable promissory notes to represent money received from the company." (The Italics are our own.)

Counsel for complainant, in his oral argument before your Honors, criticized this opinion of the Supreme Court of Louisiana, and urged that the court erred in that decision, making an error of fact, in the particular that the business of lending money on personal property, not *in-transitu*, or intended for export, was styled by the court a

CONTINUING BUSINESS,

which he contended was not true in fact. It is difficult for us, with due respect to our opponent, to understand how counsel's contention can be seriously made on this point. The evidence adverted to in the Supreme Court's opinion, abundantly establishes the fact that this branch of complainant's business, was a continuing one, and complainant's own sole witness in the case at bar strengthens and firmly establishes that fact, beyond the peradventure of a doubt. On page 93 of the transcript and Record, Breton, the sole witness of complainant, testifies:

> *"There is a continual renewal of such dealings and advances,* which, taken during the year, will give rather a large amount, which, however, can not be considered a fixed loan." (The Italics are our own.)

And again, on p. 27:

> Q. "As I understand you, a great many of these loans were for short periods, *so that you turned the money over and over again during the year?*
>
> A. *"Yes, sir."* (The Italics are our own.)

Thus, it is established by the positive testimony of complainant's own witness, that the identical money loaned

was, and is, when returned to complainant, again re-loaned or re-invested, thus making this branch of the business a continuing one. Indeed, it would be preposterous to believe for an instant that if the money loaned was returned by the borrower to the agent of complainant, and another application was made by another would-be borrower, that the agent would remit the money in hand to Paris, and then draw a bill of exchange against it, in order to realize the cash for the loan, thus making a useless delay and complication, when he could immediately lend out to the applicant the cash already in hand, realized on the prior loan. The witness admits that fact, when he admits that the money realized on these loans, when he says that the "money is turned over and over again during the year."

THE MONEY LOANED AT INTEREST.

It was also denied by complainant's counsel, in his oral argument, that the checks or overdrafts given by these borrowers for the loans, bore interest. Here, again, the Record contradicts this contention. On p. 31 of the Record, Breton is asked:

Q. *"Did you charge interest on your overdrafts?"*
A. *"Yes, sir."* (The Italics are our own.)

And on p. 33, on re-direct examination:

Q. *"And how about interest?"*
A. *"And in that way they are only charged interest on their daily ovedrafts."*
Q. *"Whereas if they give a note for the entire amount, they pay interest upon the entire amount, as evidenced by the note?*
A. *"Yes, sir."* (The Italics are our own.)

So, in Exhibit "E," Record, p. 40, it is agreed "that whenever the undersigned shall become, or remain, directly or contingently, *indebted to said company for money lent, or for money paid for the use or account of the undersigned, or for any overdraft,* or upon any endorsement, *check,* draft, guarantee, or in any manner whatsoever, or upon any claim, the said comptoir shall then and thereafter have the following rights, in addition to those created by the circumstances from which such indebtedness may arise, against the undersigned or his or their executors, administrators or assigns, namely."

And at the end of this agreement, in paragraph 3, it is provided that, in case of the sale of the securities hypothecated, the Comptoir shall "apply the proceeds of such sale, as far as needed, towards the payment of any or all such liabilities, *together with interest* and expenses of sale," etc. (Italics are our own). So that it seems clear that the money thus loaned was loaned at interest, the only difference from the case in 52 La. Annual, and the case at bar, being that the interest ran in the former case at the inception of the transaction, and on the whole amount of the non-negotiable note, from the date at which it was given; whereas in the case at bar the interest only ran from the date on which each separate amount was borrowed and the check drawn. Thus, these interest-bearing loans fall directly under the nomenclature of the Louisiana Revenue Statute as "money loaned on interest."

Evasion of Taxation.

In addition to the cases cited and quoted in our original brief, in regard to changes in manipulating property so as

to evade taxation, we submit Ransom vs. City of Burlington, 82 N. W. 427, in which a conveyance was made to another person by the taxpayer in order to avoid taxation. The Supreme Court of Iowa said:

> "It was fraudulent, being voluntary, without consideration, and made for the express purpose of defeating the assessment, and, therefore, it should be disregarded. * * * While one may lawfully dispose of his property to escape taxation—even taxation of a general character—the law will not uphold any mere manipulation, under the guise of disposition, the only effect of which is to defeat taxation."

A change in the manner of conducting its business was declared to be for the purpose of evading taxes, and therefore null and of no effect, in D. & H.Canal Company vs. Commonwealth, 17 Atl. 175.

A somewhat similar case is found in 81 N. W. 965. Loud & Sons' Lumber Company vs. Elmer, T. P.

Indeed, no stronger enunciation of the doctrine can be found than in the declaration of this Honorable Court, in Bristol vs. Washington Co., 177 U. S. 144.

> *"Persons are not permitted to avail themselves, for their own benefit, of the laws of a State in the conduct of business within its limits, and then, to escape their due contribution to the public needs, through action of this sort, whether taken for*

In regard to the

FACTS OF THE CASE,

We differ in no wise from the summary of the Master, in his report, found on pages 47 and 48 of the Record, as the facts are those correctly stated, and there is really no dispute as to the facts; but our dissent from the Master's report is simply and solely on the application of the prin-

ciples of law applicable to the facts as found by him. In this respect we differ widely from his view of

THE LAW, APPLICABLE TO THE CIRCUMSTANCES OF THE CASE.

We strongly insist on four propositions, all of which, we think, that we have incontestibly established:

I.

That there is nothing in this assessment and levy, of the tax herein, in conflict with the Constitution of the United States, or the Constitution or jurisprudence of the State of Louisiana.

II.

That there are but two questions at issue, one being whether the mere change of the evidences of debt from non-negotiable promissory notes, to checks or "*overdrafts,*" will render such checks or "overdrafts," less "concrete" or tangible evidences of debt, as required by the jurisprudence of Louisiana. We think that the change had no such effect; and,

III.

Even if it had such an effect, all the evidence and circumstances of the case show that the change resorted to was an attempt at an evasion of taxation, which no court should, or can, support or sustain, and allow such a fraud on the revenue of a State.

All these propositions we submit we have abundantly sustained.

All of which is respectfully submitted.

F. C. ZACHARIE,
E. K. SKINNER,
H. GARLAND DUPRE,
Solicitors for Respondents and Appellants.